

**THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

SHANE LONIX, ADC #145216

PETITIONER

v.

Case No. 4:19-cv-00937-KGB

DOE

RESPONDENT

ORDER

Before the Court are the Proposed Findings and Recommendations submitted by United States Magistrate Judge Joe J. Volpe (Dkt. No. 4). Judge Volpe recommends that petitioner Shane Lonix's petition for a writ of *habeas corpus* be dismissed without prejudice for failure to pay the statutory filing fee or file an application for leave to proceed *in forma pauperis*. Mr. Lonix has filed an objection to Judge Volpe's Proposed Findings and Recommendations (Dkt. No. 5). After careful review of the Proposed Findings and Recommendations and Mr. Lonix's objection thereto, as well as a *de novo* review of the record, the Court finds no reason to alter or reject Judge Volpe's conclusion. The Court writes separately to address briefly Mr. Lonix's objection.

In his objection to Judge Volpe's Proposed Findings and Recommendations, Mr. Lonix directs the Court's attention to a conditions-of-confinement case before Chief United States District Judge D. P. Marshall Jr. in which he is proceeding *in forma pauperis* ("IFP"). *See Lonix v. Thomas*, Case No. 5:19-cv-00341-DPM-JJV. However, Mr. Lonix was required to pay separately the \$5.00 statutory filing fee or file an application for leave to proceed IFP to proceed with this action in this Court. That Mr. Lonix previously filed a motion for leave to proceed IFP in another case before another judge is insufficient. Mr. Lonix also contends that his petition for a writ of *habeas corpus* should have been filed as part of his conditions-of-confinement case before Chief Judge Marshall. However, because *habeas corpus* and conditions of confinement are separate

causes of action, Mr. Lonix's petition for a writ of *habeas corpus* was properly filed as a separate action.

In sum, the Court adopts the Proposed Findings and Recommendations in their entirety as this Court's findings of fact and conclusions of law (Dkt. No. 4). The Court dismisses without prejudice Mr. Lonix's petition for a writ of *habeas corpus* (Dkt. No. 1). The Court directs the Clerk of Court to send to Mr. Lonix, together with a copy of this Order, a form AO 240, Application to Proceed in District Court Without Prepaying Fees or Costs. If Mr. Lonix wishes to continue this case, he must submit the statutory filing fee of \$5.00 or file a proper and complete application for leave to proceed IFP, along with a motion to reopen the case, within 30 days of the entry of this Order. Finally, the Court declines to issue a certificate of appealability. Mr. Lonix may still apply to the Eighth Circuit for a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B).

It is so ordered this 19th day of January, 2021.



Kristine G. Baker
United States District Judge